

## TITLE 10. INVESTMENT

### Chapter 1. Commissioner of Financial Institutions

#### Subchapter 10. Banks

#### Article 11. Securities

##### 10.19700. Scope

This Article contains regulations relating to exemptions for securities that are offered, sold and issued by California state-chartered banks pursuant to an equity compensation plan.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 697, Financial Code.

##### Subarticle 1. Equity Compensation Plans

##### 10.19800 Preamble

The Commissioner finds that securities that are offered, sold, or issued pursuant to an equity compensation plan by a California state-chartered bank are not comprehended within the purposes of Article 6, Chapter 5, of the Banking Law. In addition, the Commissioner finds that the regulation of securities issued pursuant to an equity compensation plan is not necessary, or in the public interest, or for the protection of investors. Accordingly, the Commissioner finds that securities issued under an equity compensation plan are exempt from the provisions of Financial Code Section 691, subject to the limitations provided in this subarticle.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 697, Financial Code.

##### 10.19801 Definitions

The following definitions apply to this subarticle:

(a) "Agreement" means an agreement under which an offeree is offered or awarded securities issued by the bank either through an equity compensation award or an equity compensation plan;

(b) "Consultant" means a person that provides a bona fide service to the bank or any subsidiary of the bank;

(c) "Equity compensation award" means an award of a stock option, a stock bonus, restricted stock or any other individual award of securities issued by a bank to an offeree;

(d) "Equity compensation plan" means a stock option plan, stock bonus plan, restricted stock plan, and any other employee compensation plan that provides for the issuance of securities by a California state-chartered bank to its offerees;

(e) "Offeree" means a person that is under consideration to become, or is under contract to become, an organizer, employee, officer, director, attorney, accountant or consultant of the bank or of a subsidiary of the bank at the time of the offer; and

(f) "Organizer" has the meaning set forth in Commissioner's Regulation 10.151.

(g) "Plan or Award" means an equity compensation plan and equity compensation award.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 697, Financial Code.

#### 10.19802 Exemption

(a) Any offer and sale by a California state-chartered bank of securities to offerees under an equity compensation plan or pursuant to an equity compensation award are exempt from Financial Code Section 691. The exercise of exercisable securities issued under a plan or award is also exempt from Financial Code Section 691. The exemptions under this section are subject to all of the following conditions:

(1) The offer and sale is made only to offerees;

(2) The sale of the securities is approved in advance by, or is made pursuant to, a plan or award that has been approved by the board of directors of the bank. For purposes of this condition, approval by a committee of the board does not constitute approval by the board;

(3) The plan or award complies with Corporations Code Sections 408 and 409;

(4) The plan or award is approved by shareholders of the bank within 12 months before or after the date the plan or award is approved by the board of directors of the bank. Any securities issued under the plan or award before it is approved by the shareholders:

(i) Shall not be counted toward shareholder approval of the plan or award or for any other purpose; and

(ii) Must be rescinded if shareholder approval is not obtained within 12 months before or after the plan or award is approved by the board of directors of the bank.

(b) This Section 10.19802 shall not apply to a change in rights, preferences, privileges or restrictions of or on an outstanding security unless:

(1) The change is due to an amendment to the plan or award; and

(2) The security was initially sold, and any prior changes were made, pursuant to a permit or an order of exemption issued by the Commissioner.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 697, Financial Code.

#### 10.19803 Request

Any bank that wishes to adopt or implement a plan or award that does not comply with the conditions set forth in Section 10.19802 of this subarticle shall submit a written request to the Commissioner for an order of exemption. The request shall be accompanied by:

(a) A copy of the proposed plan or award;

(b) A copy of any form of agreement that may be entered into by the bank and an offeree; and

(c) A copy of the board of directors' resolution adopting the plan or award.

NOTE: Authority cited: Section 215, Financial Code. Reference: Section 697, Financial Code.